

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

JAMES E. EVANS,

Plaintiff,

V.

CITY OF MILLBROOK,

Defendant.

2007 DEC 21 P 3:13

DEBRA P. HACKETT, CLK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA
CASE NO: 2:0

CIVIL ACTION NO.: 2:07CV1118-WKW

JURY DEMAND REQUESTED

COMPLAINT

1. This is a complaint for legal and equitable relief to redress violations by the defendants of the plaintiff's rights secured by:

a) The Age Discrimination in Employment Act of 1967 (ADEA), 29

U.S.C. §621 et seq.

b) Ala. Code 1975, as amended §25-1-20 et seq.

c) Federal subject matter jurisdiction exists pursuant to:

a) 29 U.S.C. §621 et seq.; and

b) 28 U.S.C §1331.

PARTIES

3. Plaintiff, James E. Evans (hereinafter “Evans” or “Plaintiff”), is a resident citizen of Elmore County, Alabama. Evans was employed by Defendant when the actions of which he complains took place.

4. Defendant, City of Millbrook, (hereinafter "The City" or "Defendant"), is an Alabama corporation doing business in Elmore County, Alabama.

NATURE OF ACTION

5. Evans brings this action of unlawful employment practices and acts of intentional discrimination that occurred in the City of Millbrook which is located in the Northern Division of the Middle District of the United States District Court for Alabama.

6. This is an action to redress grievances resulting from acts of Defendant, its agents, servants, and employees committed with respect to Evans' employment; and for a permanent injunction restraining Defendant from maintaining a policy and practice of discriminating against Evans and other persons similarly situated on account of age.

7. Evans also seeks back pay and liquidated damages to which he is entitled and attorneys' fees and costs.

8. The actions alleged below constitute acts of continuing violations of the law.

ADMINISTRATIVE PROCEDURES

9. On or about January 17, 2006, within 180 days of learning of the acts of discrimination of which he complains, Evans filed a charge of age discrimination with the Equal Employment Opportunity Commission (hereinafter "EEOC"). (Attached herein as Exhibit A).

10. Evans received a Notice of Right to Sue with a cause finding from EEOC,

dated October 4, 2007, entitling him to institute a civil action in federal district court.

(Attached herein as Exhibit B).

11. All prerequisites for bringing this action have been met.

STATEMENT OF FACTS

12. Evans, is fifty-one (51) years of age and has served in the City's Police Department for 24 years.

13. Evans served as Assistant Police Chief for the City from February 15, 1995 to September 1996, when the City eliminated the position.

14. On or about September 12, 2005, the City promoted Patrick Johnson a/k/a P. K. Johnson, approximately 38 years of age, from third shift patrol supervisor to Assistant Police Chief.

15. On or about November 15, 2005, the City promoted Johnny Montgomery, 33, to lieutenant and David Talley, 25, was promoted to sergeant. Again, the openings were not advertised or posted as required by City policy.

16. The Assistant Police Chief position is a classified service position.

17. The City did not post the position or otherwise follow its policies and procedures for hiring/promoting someone into a classified service position.

18. Evans is substantially more qualified than P. K. Johnson who was awarded the Assistant Chief position.

CLAIM ONE -- AGE DISCRIMINATION

19. Plaintiff incorporates by reference those statements contained in paragraphs 1-18 as if fully stated herein.

20. This is a claim to redress the unlawful employment practice of age discrimination protected by the Age Discrimination in Employment Act, as amended and Alabama Code (1975), as amended, Section 25-1-20 et seq, conducted by Defendant's agents and employees and ratified by the City.

21. Evans is over forty (40) years of age and a member of a protected class.

22. Evans was qualified to do the job duties of Assistant Police Chief.

23. Evans was denied the position, despite being qualified.

24. The motivation behind his denial was because of his age.

25. As a proximate result of Defendant's unlawful and unconstitutional conduct aforesaid, Evans suffered financial loss and career advancement.

26. Evans seeks declaratory and injunctive relief, award of lost employment benefits and wages, back pay, front pay, liquidated damages, costs and attorney's fees and any and all such other relief the Court or the trier of fact may assess.

WHEREFORE, Evans respectfully requests this Court:

A. Permanently enjoin Defendant from engaging further in their discriminatory treatment of older employees similarly situated;

B. Order Defendant, its agents, and employees to institute and carry out

policies, practices and programs which provide equal employment opportunities for older persons and which eradicate the effects of its past and present unlawful employment practices, including implementing a consistent policy against age discrimination in the work place;

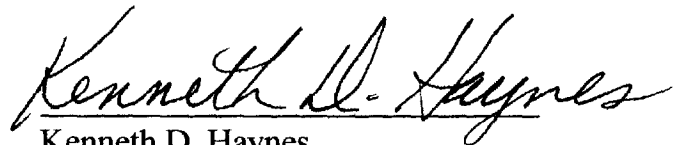
C. Order Defendant, its agents, and employees to make whole Evans whole by providing appropriate back pay with prejudgment interest, promoting Evans into the position he was unlawfully denied, or directing Defendant to pay front pay and other monetary relief in lieu thereof;

D. Award Evans liquidated damages;

E. Award Evans costs and expenses herein, including a reasonable attorney's fee; and

F. Award Evans such further and additional relief as the Court deems necessary and proper.

Respectfully submitted,

A handwritten signature in cursive script, reading "Kenneth D. Haynes". The signature is written in dark ink and is positioned above the printed name and bar number.

Kenneth D. Haynes
State Bar No: 6190-H36K

Priscilla Black Duncan
State Bar No.: 4706-D65P

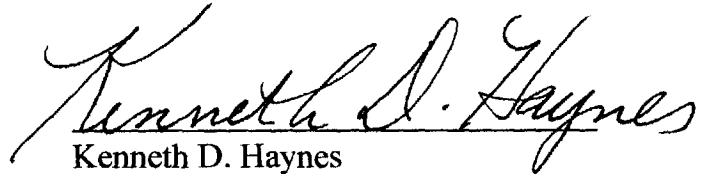
Attorneys for Plaintiff

OF COUNSEL:

HAYNES & HAYNES, P.C.
1600 Woodmere Drive
Birmingham, Alabama 35226
(205) 879-037

Priscilla Black Duncan, Esq.
P.B. DUNCAN & ASSOCIATES
472 South Lawrence Street, Suite 204
Montgomery, AL 36104

PLAINTIFF DEMANDS TRIAL BY STRUCK JURY


Kenneth D. Haynes

**PLEASE SERVE BY CERTIFIED MAIL:
DEFENDANTS' ADDRESS**

Al Kelly, Mayor
City of Millbrook
3390 Main Street
Millbrook, Alabama 36054

EEOC Form 5 (5/01)

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To:

Agency

☐ FEPA☒ EEOCPLAINTIFF'S
EXHIBIT
A

PENGAD 800-637-6989

and EEOC

State or local Agency, if any

Name (Indicate Mr., Ms., Mrs.)

James Evans

Date of Birth

06-20-56

Street Address

5000 Dyess Street

City, State and ZIP Code

Millbrook, AL 36054

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two are named, list under PARTICULARS below.)

Name

City of Millbrook

No. Employees, Members

100+

Phone No. with Area Code

334-285-6428

Street Address

3390 Main Street

City, State and ZIP Code

Millbrook, AL 36054

Name

No. Employees, Members

Phone No. with Area Code

Street Address

City, State and ZIP Code

DISCRIMINATION BASED ON (Check appropriate box(es).)

☐ RACE ☐ COLOR ☐ SEX ☐ RELIGION ☐ NATIONAL ORIGIN
☒ RETALIATION ☒ AGE ☐ DISABILITY ☐ OTHER (Specify below.)

DATE(S) DISCRIMINATION TOOK PLACE

Earliest

Latest

☐ CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

(see attached)

Related complaint # 130-2006-00562

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

NOTARY- When necessary for State or Local Agency Requirements

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(month, day, year)

Date

Charging Party Signature

Jan. 17, 2006



NOTICE OF RIGHT TO SUE
(CONCILIATION FAILURE)

To: **James Evans**
c/o Priscilla Black Duncan, Esq.
P. B. Duncan and Associates
P. O. Box 1603
Montgomery, AL 36104

From: **Birmingham District Office**
Ridge Park Place
1130 22nd Street South, Suite 2000
Birmingham, AL 35205



On behalf of person(s) aggrieved whose identity is
 CONFIDENTIAL (29 CFR § 1601.7(a))

EEOC Charge No.	EEOC Representative	Telephone No.
420 2006 00358	Glenn Todd, Investigator	(205) 212-2031

TO THE PERSON AGGRIEVED:

This Notice concludes the EEOC's processing of the above-numbered charge. The EEOC found reasonable cause to believe that violations of the statute(s) occurred with respect to some or all of the matters alleged in the charge but could not obtain a settlement with the Respondent that would provide relief for you. In addition, the EEOC has decided that it will not bring suit against the Respondent at this time based on this charge and will close its file in this case. This does not mean that the EEOC is certifying that the Respondent is in compliance with the law, or that the EEOC will not sue the Respondent later or intervene later in your lawsuit if you decide to sue on your own behalf.

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, and/or the Age Discrimination in Employment Act: This will be the only notice of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS** of your receipt of this Notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission

Delner Franklin-Thomas, District Director

4 OCT 2007

(Date Mailed)

Enclosure(s)

cc: **Rick A. Howard, Esq.**
Attorney for Respondent
P. O. Box 4128
Montgomery, AL 36103

Court Name: U S DISTRICT COURT - AL/M
Division: 2
Receipt Number: 4602002277
Cashier ID: cstrecke
Transaction Date: 12/21/2007
Payer Name: PRISCILLA DUNCAN

CIVIL FILING FEE
For: PRISCILLA DUNCAN
Case/Party: D-ALM-2-07-CV-001118-001
Amount: \$350.00

CHECK
Remitter: PRISCILLA DUNCAN
Check/Money Order Num: 1381
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

DALM207CV001118-WKW